

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.21667 of 2015  
and  
M.P.No.1 of 2015

S.Sathathunnissa

[ Petitioner ]

Vs

1 The Assistant Director of Town Panchayats  
Krishnagiri.

2 Kaveripattinam Selection Grade  
Town Panchayat  
Rep. by its Executive Officer  
O/o.Town Panchayat  
No.554 Salem Main Road  
Kaveripattinam  
Krishnagiri District-635 112.

3 The Chairman  
Kaveripattinam Selection Grade Town  
Panchayat  
O/o.Town Panchayat  
No.554 Salem Main Road  
Kaveripattinam  
Krishnagiri District-635 112.

[Respondents ]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order in N.K.No. 311/2014 (A1) dated 22.06.2015 on the file of the 2nd respondent and quash the same consequentially forbearing the respondents from interfering or disturbing the peaceful and continuous enjoyment and usage of existing vacant place having an extent of 30 X 20 (720 sq.ft.) as access to the petitioners premises having total extent of 2 785 sq.ft. with four storeyed building (JKS Automobiles) combinedly

constructed and situated in Survey No.62/1A1A New Survey Nos.640/18 640/19 and 640/20 (Old Survey No.62A within kaveripattinam Town Panchayat limit abutting kaveripattinam Bus Stand in Krishnagiri District

For petitioner : Mr.R.Girirajan

For respondents : Mr.V.Jayaprakash Narayanan, SGP (R2&3)  
Mr.A.Kumar, SGP (R1)

## O R D E R

Heard the learned counsel for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, who took notice for respondents 2 and 3 and Mr.A.Kumar, learned Special Government Pleader, who took notice for respondent 1 and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed by S.Sathathunnissa under Article 226 of the Constitution of India, seeking to quash the proceedings issued by the Chairman, Kaveripattinam Selection Grade Town Panchayat dated 22.06.2015 and for a consequential direction forbearing the respondents from interfering or disturbing the peaceful and continuous enjoyment and usage of the existing vacant place having an extent of 30 X 20 (720 sq.ft.) as access to the petitioner's premises having total extent of 2785 sq.ft. with four storied building (JKS Automobiles) combinedly constructed and situated in Survey No.62/1A1A, New Survey Nos.640/18, 640/19 and 640/20 (Old Survey No.62A, within kaveripattinam Town Panchayat limit abutting kaveripattinam Bus Stand in Krishnagiri District.

3.1 Learned counsel for the petitioner in support of the prayer submitted that the petitioner's husband Sabulal purchased a property having an extent of 768 sq.ft. comprised in Survey No.62/1A1A, within kaveripattinam Town Panchayat limit in Govinda Chetty Street, Kaveripattinam in Krishnagiri District, under a registered Sale Deed dated 15.12.2000. Adding further, learned counsel for the petitioner submitted that during the life time of the petitioner's husband, he was running an Automobile shop in the said premises for selling various spare parts usable for two wheelers and four wheelers. The said property is also having access from the side of Kaveripattinam Bus stand, adjacent to the shops owned by the 2nd respondent Panchayat, through which customers are coming to buy automobile materials from the petitioner's husband shop and also

using the same way to bring the loads of materials to the shop through vehicles, since this is the only way of free access to the property available for the said purposes.

3.2 Adding further, learned counsel for the petitioner would submit that subsequent to the death of the petitioner's husband in the year 2008, her family is maintaining the said property. It is also the claim of the petitioner that due to the expansion of the business, the petitioner's family had purchased the adjacent property to the above mentioned property, to an extent of 2017 sq.ft., after clearing all the pending dues such as property tax and electricity charges to the respective authorities including the Town Panchayat. Thereafter, according to the learned counsel, the petitioner had applied for building approval to the 2nd respondent to construct a combined commercial building on the above said both properties, as both the properties are having free and easy access through the vacant space of having 30' x 24' (720 sq.ft.) abutting the bus stand and the 2nd respondent also had accorded planning approval and only thereafter, they have constructed the building and continue to run their family business of automobiles, by using the access through the bus stand.

3.3 Now, the grievance of the petitioner, according to the learned counsel for the petitioner is that when they have been using the said access without any disturbance and interruption whatsoever from any one, including the respondents for the past 15 years, during April 2015, notices were issued to lease holders of the above said Town Panchayat Shops, with a proposal of construction of new shops. Therefore, since the said process may cause hindrance to the free access, the petitioner made a representation on 02.04.2015 to the 2nd respondent requesting to refrain from causing any disturbance to the free access to the business area. In the said representation, the petitioner had also expressed their readiness and willingness to pay a reasonable rent for the usage of the said place. Since, there was no response, the petitioner has come to this Court by filing W.P.No.10722 of 2015.

3.4 But, this Court, by order dated 15.04.2015 in W.P.No.10722 of 2015, directed the respondents to consider and pass orders on the petitioner's representation dated 02.04.2015 within a period of two weeks from the date of receipt of a copy of that order and till such time, parties were directed to maintain status-quo. However, the 2nd respondent, without taking into account the order passed by this Court, has refused to consider the request of the petitioner by stating that the petitioner does not have any title over the subject place. Therefore, the petitioner has again come to this Court, he

pleaded.

3.5 That apart, according to the learned counsel for the petitioner, when the petitioner all along has been using the land in question to have access to their shop, the respondent cannot refuse the more reasonable request made by her to allow the property for the usage on receipt of reasonable rent.

3.6 In support of the above submissions, the learned counsel for the petitioner has placed on record the Judgment of this Court in the case of Mecca Jumma Mosque rep. by its Assistant Imam, S.Mannan Ahmed Moideen vs. The Director of Municipalities, Chennai and 2 others reported in (2001) 2 LW 817 to say that the respondents are not entitled to construct any shop on the road margin viz., disputed place which is used by both the petitioner and the public for loading and unloading the materials daily from the vehicle coming to the parcel service shop.

4. On the other hand, learned Special Government Pleaders appearing for the respondents submitted that the two properties purchased by the petitioner's husband and the petitioner vide sale deeds dated 15.12.2000 and 08.03.2010 respectively are also having back side entrances for loading and unloading the materials. Therefore, it is not proper on the part of the petitioner to say that the petitioner's building, which has backside entrance of only 8" width is not practically usable for loading and unloading the materials and moreover, it is on the other side of the bus stand.

5. Considering the submissions made by the learned counsel on either side, this Court, finds it difficult to accept either the submissions made by the learned counsel for the petitioner or the conclusion arrived at by this Court in the aforementioned Judgment to answer the prayer in his favour. The reason is that in the said Mecca Jumma Mosque's case, after referring to the Full Bench Judgment of this Court in the case of Aluminum Industries Limited vs. Minerals & Metals Trading Corp. of India Ltd., 1997 (II) CTC 630, wherein it is held that the parties have to approach the Civil Court in cases where the facts and circumstances warrant and if the situation demands only then the exercise of power of judicial review is available under Article 226 of the Constitution of India and the jurisdiction to exercise the power of judicial review under Article 226 of the Constitution is not totally curtailed or absolutely excluded in examining and testing the validity of state action, even in such matters, in extra ordinary cases as to whether the requirement of Article 14 of the Constitution were satisfied by the

State/Authority, though ordinarily the Courts may not entertain writ petitions and decline to grant the relief exercising powers under Article 226 of the Constitution for enforcement of terms of contracts, one of the parties being State or authority to such contracts, the learned Judge therein, decided the dispute only on the basis of the admitted facts.

6. As far as the case in hand is concerned, the respondents have not admitted the issue that the land in question is exclusively used only by the petitioner. In fact, the petitioner has also pleaded in paragraph No.3 of the affidavit that all types of commercial vehicles are also coming inside the bus stand to unload the materials to the respective shops and similarly, the vehicles are also coming to the parcel service shop, for loading and unloading the materials daily, which goes to show that if the petitioner's request is considered and accepted by the 2nd respondent, the petitioner who will become ultimately a tenant, will be preventing all other vehicles coming to the parcel service shop for loading and unloading the materials daily. Therefore, the 2nd respondent has rightly refused the request of the petitioner. In such view of the matter, this Court is not inclined to entertain the writ petition. Therefore, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/-  
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Assistant Director of Town Panchayats  
Krishnagiri.
- 2 Kaveripattinam Selection Grade  
Town Panchayat  
Rep. by its Executive Officer  
O/o.Town Panchayat,  
No.554 Salem Main Road (Now Palacode Road)  
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Krishnagiri District-635 112.

1 CC to Mr.R.Girirajan, Advocate SR.No. 36646

1 CC to Mr.V.Jayaprakash Narayanan, Advocate SR.No. 36793

1 CC to the Government Pleader, SR.No. 37434

EV (CO)  
PSI (21.08.2015)

W.P.No.21667 of 2015



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